



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: October 13, 2006

Number: **200701033**

Release Date: 1/5/2007

UIL 507.04-00

Employer Identification Number:

Person to Contact and ID Number:

Toll Free Contact Number:

Accounting Period Ending:

Advance Ruling Ending Date:
Date 2

LEGEND:

A =

B =

C =

M =

N =

W =

X =

Date 1 =

Date 2 =

Year 1 =

Dear A:

This is in response to your request for an advance ruling pursuant to section 1.507-2(e)(1) of the Income Tax Regulations pertaining to your proposed termination of private operating foundation status pursuant to the provisions of section 507(b)(1)(B) of the Internal Revenue Code.

FACTS

You have filed an appropriate consent under section 6501(c)(4) of the Code to extend the period of limitation of assessment of tax due under section 4940 of the Code.

You have notified Exempt Organizations Determinations that you will begin a 60-month termination of your private operating foundation status on Date 1. Beginning on this date, and for a continuous 60-month period thereafter, you expect to operate as a non-private foundation as described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. To do this, you state that you will operate in the manner specified below.

You are an organization described in section 501(c)(3) of the Internal Revenue Code, and are classified as a private operating foundation under section 4942(j)(3) of the Code.

You were established in Year 1 in the State of M for the purpose of providing social and recreational programs for youth to promote the health, physical, social, educational, vocational,

character and leadership of the youth membership. Today, you offer classes for preschool children through adults, as well as summer camp, academic, educational, physical and recreational activities. Your activities include, among others, leadership, social development and teamwork training exercises; computer classes; dance, art, and music lessons; athletic activities; cooking and sewing classes; and family-oriented events.

You were initially funded and the main facility was contributed by members of the B Family. Over the years, you were funded primarily by C, an exempt private foundation described in section 501(c)(3) of the Code, and nominally from amounts charged to the youth membership for participation in your activities. Fees are set at an amount that permits maximum participation in activities by low income members.

In the recent past, you hired a director of development and implemented a development program. As a result, your current and anticipated funding sources include, in addition to C, contributions from corporations, government agencies, private foundations, and individual supporters. You expect development activities to continue to expand, and continue to seek additional funding sources. Amounts charged to the youth membership for participation in activities, weekly dues and additional fees to cover costs for some programs remain nominal.

Your board of directors consists of W individuals representing the greater N community, including individuals with significant experience in education, social work, and youth services. Two of the board members were formerly or are currently employed by organizations affiliated with the B family. You anticipate that the board composition, in addition to the increased development, will generate significant support from the public.

During and after the 60-month period that begins on Date 1 and ends on Date 2, you state that you expect to receive at least 10% of your support from public sources and that your main sources of support will be from contributions from corporations, government agencies, private foundations, and individual supporters.

RULING REQUESTED

You are requesting the ruling that, as contemplated by section 1.507-2(e) of the Income Tax Regulations, you can be expected to satisfy the requirements of section 507(b)(1)(B)(i) of the Code during the 60-month termination period.

LAW

Section 507(b)(1)(B) of the Internal Revenue Code provides, generally, that the status as a private foundation of any organization shall be terminated if:

- (i) The organization meets the requirements of paragraph (1), (2) or (3) of section 509(a) for a continuous period of 60 calendar months beginning with the first day of any taxable year which begins after December 31, 1969;

(ii) The organization notifies the Secretary before the commencement of the 60-month period that it is terminating its private foundation status; and

(iii) The organization establishes to the satisfaction of the Secretary immediately after the expiration of the 60-month period that it has complied with clause (i) of section 507(b)(1)(B) of the Code.

Section 509(a) of the Code provides in part that the term "private foundation" includes a domestic or foreign organization described in section 501(c)(3) other than an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)).

Section 1.507-2(e)(1) of the regulations provides that an organization which files the notification required by section 507(b)(1)(B)(ii) of the Code that it is commencing a 60-month termination may obtain an advance ruling from the Commissioner that it can be expected to satisfy the requirements of section 507(b)(1)(B) during the 60-month period. Such an advance ruling may be issued if the organization can reasonably be expected to meet the requirements of section 507(b)(1)(B) during the 60-month period. The issuance of the ruling will be discretionary with the Commissioner.

Section 1.507-2(e)(2) of the regulations provides that in determining whether an organization can reasonably be expected to meet the requirements of section 507(b)(1)(B)(i) of the Code for the 60-month period, the basic consideration is whether its organizational structure (taking into account any revisions made prior to the beginning of the 60-month period), proposed programs or activities, intended method of operation, and projected sources of support are such as to indicate that the organization is likely to satisfy the requirements of section 509(a)(1), (2), or (3) and section 1.507-2(d) of the regulations during the 60-month period. In making such a determination, all pertinent facts and circumstances shall be considered.

Section 1.507-2(e)(3) of the regulations provides that, for the purposes of sections 170, 545(b)(2), 642(c), 2055, 2106(a)(2), 2522, 4942, and 4945, grants or contributions to an organization which has obtained an advance ruling pursuant to this paragraph will be treated as made to an organization described in section 509(a)(1), (2), or (3), as the case may be, until notice that such advance ruling is being revoked is made to the public (such as by publication in the Internal Revenue Bulletin). The preceding sentence shall not apply, however, if the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization's failure to meet the requirements of section 509(a)(1), (2), or (3) of the Code, or acquired knowledge that the Internal Revenue Service had given notice to such organization that its advance ruling would be revoked.

Section 1.507-2(e)(4) of the regulations provides that an organization obtaining an advance ruling pursuant to this paragraph cannot rely on such a ruling. Therefore, if the organization does not pay the tax imposed by section 4940 of the Code for any taxable year or years during the 60-month period, and it is later determined that such tax is due for such year, the organization is liable for interest.

ANALYSIS

Pursuant to section 1.507-2(e)(1) of the regulations, you filed the notification required by section 507(b)(1)(B)(ii) of the Code that you are commencing a 60-month termination of your private foundation status, and may therefore obtain an advance ruling that you can reasonably be expected to satisfy the requirements of section 507(b)(1)(B)(i) during the 60-month period.

Pursuant to section 1.507-2(e)(2) of the regulations, you have stated that, during the 60-month termination period, you will: (1) expand your development efforts such that you expect to normally receive a substantial percentage (at least 10% and, based on recent years, over X%) of your support from corporations, government agencies, private foundations, and individual supporters; (2) continue to be organized and operated so as to attract new and additional public and governmental support through a continuous and bona fide program for solicitation of funds through your development activities; (3) continue the public nature of your operations as you have since Year 1, which insures broad and loyal public support; (4) maintain a board of directors that represents the broad interests of the greater N, M community; and (5) continue to maintain your facilities for public access and enjoyment, including charging nominal fees so that membership is available to a broad cross-section of youth and the public has tremendous access to your resources on a continuous basis.

CONCLUSION

Based on the information submitted, we rule as follows:

Under section 1.507-2(e)(1) and (2) of the regulations, taking into account your organizational structure, proposed programs or activities, intended method of operation, and projected sources of support, you can reasonably be expected to satisfy the requirements of section 507(b)(1)(B)(i) of the Code during the 60-month period beginning Date 1.

Within 90 days after the end of your 60 month period, you must establish to the satisfaction of the Internal Revenue Service that you have qualified as an organization which meets the requirements of paragraph (1), (2), or (3) of section 509(a) of the Code for the 60 month period. If you do establish that fact, you will be so classified for all purposes beginning with the first day of the first taxable year of the 60 month period and thereafter, so long as you continue to meet the requirements of section 509(a)(1), (2), or (3). If, however, you do not meet these requirements for the 60 month period, you will be classified as a private foundation as of the first day of the first taxable year of the 60 month period.

Pursuant to section 1.507-2(e)(3) of the regulations, for the purposes of sections 170, 545(b)(2), 642(c), 2055, 2106(a)(2), 2522, 4942, and 4945 of the Code, grants or contributions to you, as an organization which has obtained this ruling, will be treated as made to an organization described in section 509(a)(1), until notice that such advance ruling is being revoked is made to the public (such as publication in the Internal Revenue Bulletin). The preceding sentence shall not apply, however, if the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in your failure to meet the requirements of section 170(b)(1)(A)(vi) of

the Code, or acquired knowledge that the Service had given notice to you that your advance ruling would be revoked.

Pursuant to the provisions of section 1.507-2(e)(4) of the regulations, you cannot rely on this ruling to avoid the imposition of tax under section 4940 of the Code. Consequently, if you do not pay the tax imposed by section 4940 of the Code for any taxable year or years during the 60-month period, and it is subsequently determined that such tax is due for such year or years (because you did not in fact complete a successful termination pursuant to section 507(b)(1)(B) and were not treated as an organization described in section 170(b)(1)(A)(vi) of the Code for such year or years), you will be liable for interest in accordance with section 6601 for any amount of tax under section 4940 which has not been paid on or before the last date prescribed for payment. However, since any failure to pay such tax during the 60-month period (or period prior to the revocation of this ruling) would be due to reasonable cause, the penalty under section 6651 with respect to the tax imposed by section 4940 shall not apply.

If you fail to satisfy the requirements of section 170(b)(1)(A)(vi) of the Code for the continuous 60-month period, but satisfy the requirements of section 170(b)(1)(A)(vi) for any taxable year or years during such 60-month period, you will be treated as a public charity exempt under that section only for such taxable year or years. Grants or contributions made to you during such taxable year or years shall be treated as made to a section 509(a)(1) organization as described in section 170(b)(1)(A)(vi) of the Code. In addition, sections 507 through 509 and Chapter 42 shall not apply to you for any taxable year within such 60-month period for which you meet the requirements of section 170(b)(1)(A)(vi).

Even though you are treated as a non-private foundation for some purposes, pursuant to section 6033 of the Code you are still required to file annual return, Form 990-PF, Return of Private Foundation. Page 1 of Form 990-PF has a block to indicate that you are in the process of terminating your private foundation status. You should attach a copy of this ruling to each 990-PF you file during the 60-month period of your termination.

In the event you supply EO Determinations within 90 days after the expiration of your 60-month termination period with information that shows the termination was effective, then you should file Form 990 for the final year of the termination period. This applies even if EO Determinations has not yet affirmed that you have appropriately terminated your private operating foundation status by the time the return for the final year of termination is due.

This ruling is based on the understanding there will be no material changes in the facts upon which it is based. Any changes that may have a bearing upon your tax status should be reported to the Service.

This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, Notice of Intention to Disclose. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

Because this letter could help resolve any future questions about tax consequences of your activities, you should keep a copy of this ruling in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney and Declaration of Representative currently on file with the Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Debra J. Kaweck
Manager, Exempt Organizations
Technical Group 2

Enclosures (2): Notice 437
Form 872-C